

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

REGINALD HIGGINS, SR.,
Plaintiff,

vs.

VITRAN EXPRESS, et al.,
Defendants

Civil Action No. 1:09-cv-228
Dlott, J.
Hogan, M.J.

**REPORT AND
RECOMMENDATION**

This matter is before the Court on defendant Vitran Express, Inc.'s motion to strike plaintiff's putative amended complaint or, in the alternative, partial motion to dismiss plaintiff's putative amended complaint (Doc. 37), to which plaintiff has not responded.

On April 7, 2009, plaintiff Reginald Higgins, Sr. filed a pro se complaint against defendant Vitran Express, his former employer, alleging discrimination in employment in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. (Doc. 3). Defendant Vitran Express filed its answer to plaintiff's complaint on May 14, 2009. (Doc. 8). Seven months later, plaintiff filed an amended complaint against Vitran Express without seeking leave of court or obtaining the written consent of Vitran Express.

Federal Rule 15(a) governs the amendment of a complaint before trial and provides in pertinent part:

(1) Amending as a Matter of Course. A party may amend its pleading once as a matter of course:

- (A) before being served with a responsive pleading; or
- (B) within 20 days after serving the pleading if a responsive pleading is not allowed and the action is not yet on the trial calendar.

(2) Other Amendments. In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. . . .

Fed. R. Civ. P. 15(a).

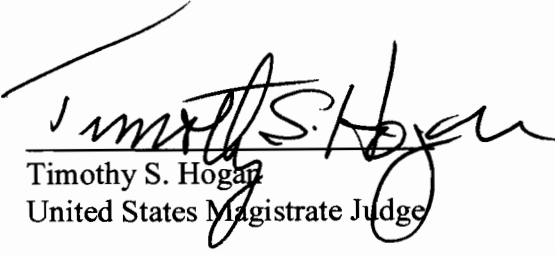
In this case, a responsive pleading, *i.e.*, Vitran Express's answer, was filed before plaintiff submitted his putative amended complaint. Plaintiff did not receive Vitran Express's written consent nor seek leave of court in accordance with Rule 15(a)(2) before filing the amended complaint. Accordingly, defendant's motion to strike should be granted.

IT IS THEREFORE RECOMMENDED THAT:

1. Defendant Vitran Express's motion to strike plaintiff's putative amended complaint (Doc. 37) be **GRANTED**.
2. Defendant Vitran Express's alternative partial motion to dismiss plaintiff's putative amended complaint be **DENIED** as moot.

Date:

3/30/10


Timothy S. Hogan
United States Magistrate Judge

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**NOTICE TO THE PARTIES REGARDING THE FILING OF OBJECTIONS TO THIS
R&R**

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to this Report & Recommendation ("R&R") within **FOURTEEN (14) DAYS** of the filing date of this R&R. That period may be extended further by the Court on timely motion by either side for an extension of time. All objections shall specify the portion(s) of the R&R objected to, and shall be accompanied by a memorandum of law in support of the objections. A party shall respond to an opponent's objections within **FOURTEEN (14) DAYS** after being served with a copy of those objections. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

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1:09 cv 228 Docs. 44, 45, 46